IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 3RD DECEMBER 2007 / 12TH AGRAHAYANA 1929

MFA.No. 1575 of 2001(D)

O.P(MV).NO.1572/1996 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, ERNAKULAM.
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APPELLANT/ CLAIMANT:

MANUEL, SON OF LAZER,
PULIKKAL HOUSE,
ELAMAKKARA.P.O.,
COCHIN - 682026.

BY ADV. SRI.SREELAL N.WARRIER,
ADV. SMT.SILVY JOSEPH.

RESPONDENTS/ RESPONDENTS:
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1. **ANTHONY, S/O. PETER, PAINGUMTHARA HOUSE, THAIKKATTUKARA, ALUVA VILLAGE, ALUVA TALUK.**

2. **P.M. ISMAIL, S/O. MOIDEENKUNJU, THEKKEPEDIAKKAL HOUSE, CHURNIKKARA, THAIKKATTUKARA, ALUVA.**

3. **ORIENTAL INSURANCE CO. LTD., ALUVA BRANCH, RAILWAY STATION ROAD, ALUVA.**

BY ADV. SRI.MATHEWS JACOB (SR.),
ADV. SRI.P.JACOB MATHEW.

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 03/12/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.T.SANKARAN, JJ.

M.F.A.NO.1575 OF 2001(D)

Dated this the 3rd day of December, 2007

J U D G M E N T

KOSHY,J.

Appellant claimant at the age of 40 sustained serious injuries in a motor accident on 8.1.1996. While he was travelling in a scooter, a lorry driven by the 1st respondent, owned by the 2nd respondent and insured by the 3rd respondent Insurance company hit the scooter, and as a result of which accident occurred. He claimed a compensation of Rs.7,50,000/-. Tribunal awarded only an amount of Rs.1,97,500/- including medical expenses. Only quantum of compensation is disputed in this appeal.

2. With regard to the injuries, tribunal has considered the matter in detail at paragraph 11 which is as follows:

“The injuries sustained by the petitioner recorded in Ext.A5 are:

> 10 x 5 x 2 cm degloving injury anterior aspect of (R) knee wth femoral condyle, patella and knee joint exposed. Another injury (degloving) below the previous wound with bone exposed. 3 x 1 cm lacerated wound dorsum of right foot. 2 x 1 cm lacerated wound over oceipital region. Lacerated wound over the nose and lips. Loss of lower three teeth.

He had been in the hospital as inpatient for 51 days. I already opined that he had to take at least 8 months rest for healing of the wound and union of the fractured bones. So considering the nature of injuries sustained, the sufferings that he had and the period of treatment he had undergone, I award a sum of Rs.30,000/- (Rupees thirty thousand only) to the petitioner towards compensation for pain and sufferings. Ext.A6 is the medical certificate issued by Dr.K.A.Ranganath stating that there was deformity of right leg, unable to squat, difficulty in climbing steps and his permanent partial physical disability is assessed to be at 32%. The doctor, who issued Ext.A6 is not examined. Ext.A9 is the medical certificate issued by the Board of Doctors stating that

> he has got gross deformity of (R) knee with severe limitation of motion and instability of (L) knee producing pain in walking and difficulty to squat and bear weight and climb stairs or walk on uneven grounds due to severe secondary osteoarthritis of (R) knee and shortening of leg (R). He is also having chronic osteomyelitia of (R) upper tibia. He is an orthopaedically disabled person and his partial permanent disability is assessed to be at 45%."

Tribunal assessed 25% disability. It is the contention of the claimant that in view of the accident, there is 100% loss of earning power, as that of the difficulties, he cannot drive the vehicle any more. When physical permanent disability was assessed at 45%, he cannot drive at all and compensation for 100% loss of earning power should be given. We are of the opinion that there is no reason for assessing a lesser permanent disability than that was assessed by the Medical Board. Medical Board assessed 45% disability and compensation should be awarded atleast for 45% disability and earning power. Injuries suffered as can be seen from Ext.A5 wound certificate also justifies the same. With regard to the

monthly income, it was stated that he was getting Rs.3,000/- per month and he was a driver by profession. Tribunal has fixed only Rs.1,500/-. In the year 1996, a professional driver will get more than Rs.100/- per day apart from the bata. He was 40 years and he was maintaining a family. Taking into account all these aspects, atleast Rs.2,000/- should have been fixed as the monthly income. Tribunal has taken only 13 as the multiplier. Under the 2nd Schedule, if the accident victim is between 40 and 45 years, multiplier is 15. It is the contention that in view of the reduction in the interest rate and increase in the life expectancy, a higher multiplier should be fixed. But Supreme Court in ***Smt. Supe Dei and others v. M/s.National Insurance Co. Ltd. And another (JT 2002 (Suppl.1) SC 451)*** and ***A.P.S.R.T.C. v. M.Pentaiah Charg (2007 AIR SCW 5689)*** held that only in exceptional circumstances, multiplier fixed under the 2nd Schedule should be deviated. If that be so, 15 is the apt multiplier. Therefore compensation payable will be Rs.2,000 x 15 x 12 x $^{45}/_{100}$ =Rs.1,62,000/-. Tribunal has granted only Rs.58,500/-. Hence the additional amount payable is Rs.1,03,500/-. Tribunal after

considering medical records, found that he was under treatment for eight months. Hence for actual loss of earning for eight months, enough amount was granted. Since we have increased the monthly income by Rs.500/- he is entitled to another Rs.4,000/- on this regard. It was submitted that compensation granted for pain and suffering, medical treatment etc. are very low. However, considering the total amount granted, we are not enhancing the same. The above additional amount of Rs.1,07,500/- should be deposited by the 3rd respondent Insurance company with 7.5% interest from the date of application till its deposit over and above the decreed amount by the tribunal. Since the accident happened in 1996, on deposit of the above, appellant is allowed to withdraw the same. With the above observations this appeal is allowed.

J.B.KOSHY, JUDGE

K.T.SANKARAN, JUDGE

prp

J.B.KOSHY & K.T.SANKARAN, JJ.

M.F.A.NO.1575 OF 2001 ()

J U D G M E N T

3rd December, 2007